

#### **405 KAR 7:110. Petitions for rulemaking.**

RELATES TO: KRS 350.255

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.255, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part directs the cabinet to include, as part of its permanent regulatory program for surface coal mining and reclamation operations, certain procedural regulations relating to due process hearings and rulemaking. This administrative regulation specifies how any person may petition the secretary of the cabinet to initiate rulemaking procedures. The administrative regulation sets forth petition requirements, time limits, and other aspects of the rulemaking petition process.

Section 1. Petitions for Rulemaking. (1) Any person may petition the secretary to initiate a proceeding for the issuance, amendment, or repeal of any administrative regulation promulgated pursuant to KRS Chapter 350. The cabinet will not accept a petition relating to an administrative regulation that is in the process of being promulgated or amended under the normal promulgation procedures of KRS Chapter 13 since the petitioner is provided an opportunity to be heard under those procedures. Similarly, the cabinet will not accept a petition on an emergency administrative regulation where the cabinet is intending to or has initiated the regular promulgation process under KRS Chapter 13.

(2) The person petitioning for a rulemaking shall make his or her petition in writing and shall set forth the facts, technical justification and law which support the petition. The facts and the technical justification must be sufficient for the cabinet to make a decision as to the merits of the petition within the time required below. Insufficient facts and technical justification shall be grounds for denial of the petition. The petition shall set forth the basis in law for the proposed rulemaking and shall justify the proposal as being neither more nor less stringent than allowed by SMCRA and KRS Chapter 350.

(3) Upon submission of a petition, the petitioner shall publish notice of submission of the petition in newspapers designated by the cabinet according to KRS Chapter 424. The notice shall briefly identify the subject of the petition, state that copies are on file for public review at the Frankfort office of the cabinet, and state that any person may within fifteen (15) days of publication of the notice request a public hearing on the petition by written request to the cabinet. The notice shall also state that anyone requesting a hearing will be informed by letter from the cabinet of the time and place of the hearing.

(4) A petition will not be deemed complete until the petitioner submits to the cabinet a copy of the published notice and proof of publication of the notice in the form of an affidavit from the publishers.

(5) The cabinet will hold any requested public hearing within thirty (30) days of the filing of the complete petition. The hearing shall be legislative in nature.

(6) The secretary shall render a final order granting or denying the petition within thirty (30) days after the hearing or within sixty (60) days of the filing of the complete petition if no hearing was requested. The final order shall grant or deny the petition on the grounds that there is or is not a reasonable basis for the petitioned rule change or that such change is required or prohibited by law. The order shall be in writing and shall explicitly set forth the reasons for the decision.

(7) If a petition is granted proposing the issuance, amendment or repeal of administrative regulations which were the subject of the petition, the secretary shall initiate the rulemaking proceeding pursuant to KRS Chapter 13 within thirty (30) days of the final order granting the petition.

(8) Any participant in the petition proceedings may seek review of an order of the secretary denying all or any portion of the action requested in a petition in the Franklin County Circuit Court.

Section 2. Suspension of Administrative Regulations. The secretary may, on a case-by-case ba-

sis, suspend any administrative regulation or portion of any administrative regulation when the secretary determines that such administrative regulation (or such similar regulation promulgated by an agency of the federal government for which the cabinet is under a duty by law to have a consistent regulation in point) has been held by a court of competent jurisdiction to be unlawful, unconstitutional, or otherwise defective; or when the secretary determines that the state administrative regulation is inconsistent with KRS Chapter 350 due to changes in the corresponding federal regulation. In making a decision to suspend an administrative regulation, the secretary shall consider the duties of the cabinet to implement a permanent regulatory program, its general statutory authority and duties, and the requirements as set forth by law as to the stringency of the cabinet's regulatory program. (8 Ky.R. 1482; eff. 1-6-83.)